

ARTICLE 10

SECTION 1

INCOME OWNERSHIP/AVAILABILITY

1. GENERAL

Income is used to determine if there is a share of cost. This section provides details for determining what income is, who owns the income and the availability of income to the MFBU.

2. INCOME

Income counted in a Medi-Cal case must be currently available and received by eligible and/or ineligible members of the MFBU. Income to be considered includes benefits received in cash or in kind from:

- A. Labor
- B. Services provided
- C. Business activities
- D. Returns from real or personal property
- E. Contributions
- F. Other similar sources

3. OWNERSHIP OF INCOME

- A. Income is considered to belong to the person who:
 - 1) Is named on a negotiable instrument; or
 - 2) Is given cash; or
 - 3) Receives the income in kind.
- B. Payments made in the name of more than one person shall be considered available in proportion to each person's ownership interest in the income source as specified in the ownership instrument.
- C. Where income is received in the name of more than one person and there is no instrument establishing ownership proportions, the income shall be evenly divided among all named persons.

- D. Community property laws shall not be a consideration in determining the ownership or availability of the income of either spouse.
- E. Income received in the name of an applicant/beneficiary shall not be considered available where the evidence clearly establishes that he/she is receiving the income as a representative payee, conservator, or guardian on behalf of another person and the payee has no ownership interest in the income or its source.
- F. Income from an exempt trust shall be considered available as specified by the trust documents. In the absence of specific provision in the trust document, the income shall be considered available as specified in (A) through (E) above.

4. AVAILABLE INCOME

Income is considered available the month it is received, or becomes available for use by the person unless it is to be apportioned over time, as detailed in MPG Article 10, Section 3, or, considered unavailable to the beneficiary, as detailed in item 5, below.

Only income that is available to meet the current needs of the person/family is considered when determining share of cost. Applicants/beneficiaries must apply for and accept any unconditionally available income, as detailed in MPG Article 4, Section 12.

A. Taxes

Taxes withheld from earned and unearned income are considered available to the client, whether or not the client actually has control of receipt of the gross amount.

Example: Federal taxes are withheld from military retirement payments. The withheld taxes are considered available income.

B. Garnisheed Income and Voluntary Deductions

Garnisheed income (e.g., to pay back taxes) and voluntary deductions (e.g., credit union deductions for loans) are considered available income.

C. Income of SSI/SSP or IHSS Recipient

In order to determine the availability of any income from the SSI/SSP or IHSS recipient the worker must complete Section 2 of form MC 176W. (Instructions for completion of form MC 176W are located in MEM forms.)

5. UNAVAILABLE INCOME

- A. Income that is not available to meet current needs of a person/family is not counted when determining that person's/family's share of cost.

Unavailable income includes, but is not limited to:

- 1) The portion of Worker's Compensation and other public or private insurance settlements that is either:

- a) Designated for medical, legal or other expenses; or
- b) Not controlled by the client or anyone acting on his/her behalf.

- 2) The portion of contributions to the applicant/beneficiary that is both:

- a) From a person living in the household who has no legal responsibility to support the client, such as an unrelated adult or adult child; and
- b) Used to meet the actual costs of the contributor's share of housing, utilities, food and other household costs.

If actual costs are unavailable, the amounts specified in MPG Article 10, Section 5, Appendix A will be used (i.e., the contributor's share will be the difference between the in-kind values for the family size with the contributor included and excluded).

- 3) That portion of the monthly income of a medically needy person residing in a licensed board and care facility, which is both:

- a) Paid to the facility for residential care and support; and
- b) In excess of the maintenance need level as determined in MPG Article 11.

See MPG Article 10, Section 5 for detailed instructions regarding treatment of income of persons in board and care.

- 4) An advance or a reimbursement from an employer to cover expenses necessary for job performance. Any portion of the reimbursement that exceeds the client's actual out-of-pocket cost is available income.

- 5) Court ordered child support and/or spousal support paid out by an ABD-MN person is considered unavailable income. The amount to be considered unavailable is the amount actually paid or the amount specified in the court order, whichever is less. This is also applied to LTC recipients. This is part of the GIBBONS vs. RANK court case.

- 6) Amounts deducted from a beneficiary's benefit payment by a public or private agency for purposes of collecting a previous overpayment of the benefit are unavailable income. Such amounts must be excluded from countable income when determining the Medi-Cal beneficiary's share of cost.

Benefit payments include entitlement payments, payments due to a beneficiary's impairment or disability, and payments due to a beneficiary's retirement, pension or annuity rights.

- B. When a person is in LTC and is in his/her own MFBU (as detailed in MPG Article 8, Section 1) his/her spouse's income is considered unavailable to the LTC person.